

# Election Year Considerations for Nonprofits: What Your Organization Needs to Know

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## Moderator

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# Agenda

- Why It Matters
- Overview of Issues
- 501(c)(3) Activity
- 501(c)(4) and (6) Activity
- Political Action Committees





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# Why It Matters

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# Why It Matters

- Many organizations are politically active
- Many executives want to be involved
- Risks and rewards for political activity
- Political law manages the risks



# Why Be Politically Active?

- Protect your organization/members/interests
- 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 organization
  - Potential fines and reputational risk
- Scrutiny from:
- Regulators
  - Media
  - Competitors
  - Watchdogs

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# Overview of Issues

## The Legal Framework

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# Nonprofit Organizations

<b>501(c)(3): Public Charity</b>	<b>501(c)(6): Trade Association 501(c)(4): Social Welfare</b>
<p>No “campaign intervention”</p> <ul style="list-style-type: none"> <li>• No endorsements</li> <li>• No contributions</li> <li>• No communications to support candidates</li> </ul>	<p>Campaign intervention limited</p> <ul style="list-style-type: none"> <li>• May not be primary purpose</li> <li>• May contribute to candidates (if allowed under state law)</li> <li>• May form a PAC (SSF, super PAC)</li> <li>• May make communications to support candidates (beware of disclosure)</li> </ul>
<p>Lobbying may not be substantial part of activities</p>	<p>Unlimited lobbying</p>
<p>Unlimited issue advocacy if not lobbying</p>	<p>Unlimited issue advocacy</p>

## Defining the Terms

### Lobbying

- Influencing legislation

### Campaign Intervention

- Supporting/Opposing Candidates

# Basic Campaign Contribution Rules

## Corporations/Nonprofits

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- Federal: may not give
- State: laws vary

## Foreign Nationals

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- Prohibited at federal, state, and local level
- May not control political activities

## Contractors

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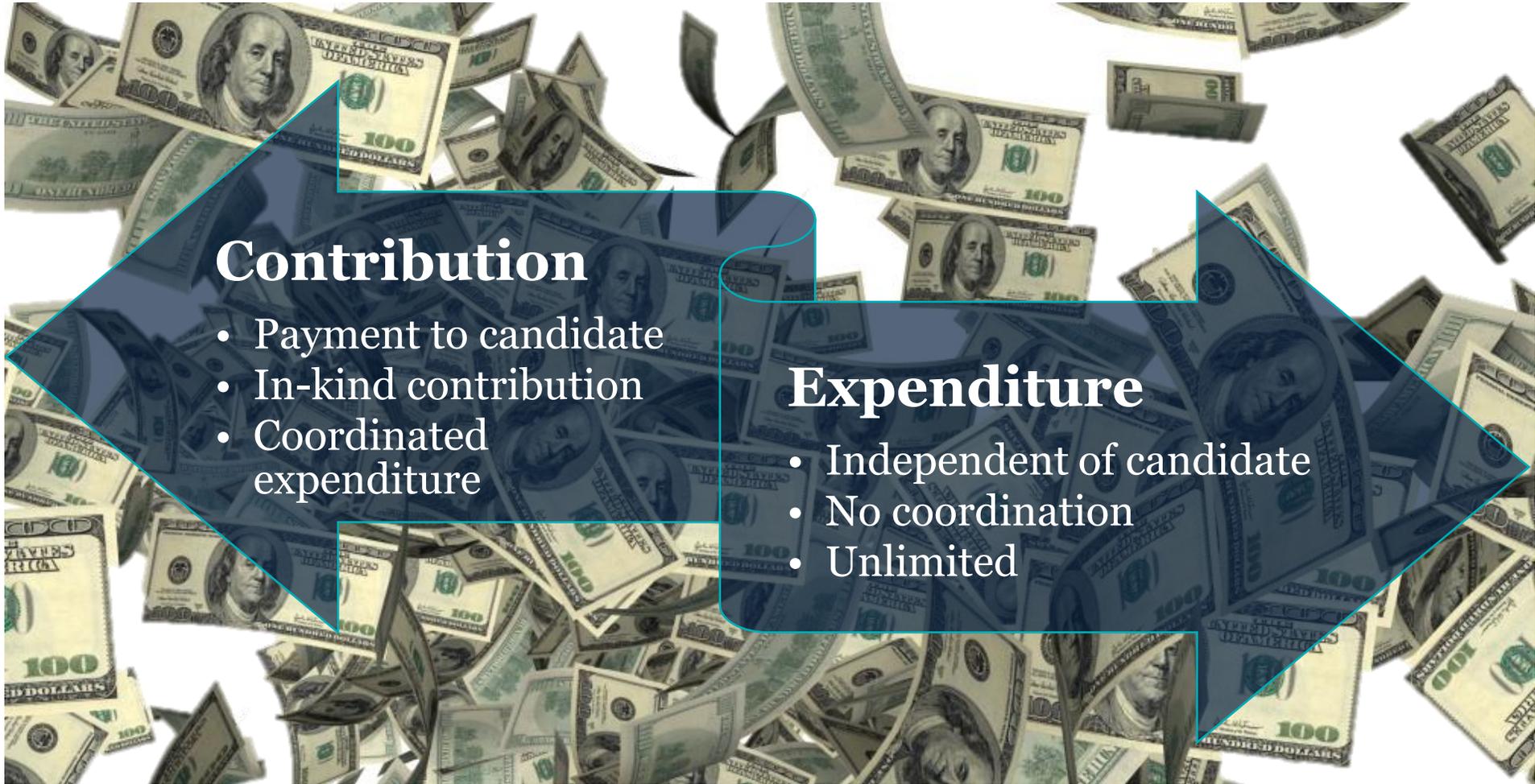
- Federal: banned (but applies mostly to individuals)
- State: restricted by many state and local laws

## Reimbursements

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- Prohibited at federal, state, and local levels
- Earmarking through other entities often restricted

# Contributions & Expenditures



## Contribution

- Payment to candidate
- In-kind contribution
- Coordinated expenditure

## Expenditure

- Independent of candidate
- No coordination
- Unlimited

# Tax on Political Activity

- 527(f) Tax
- Lesser of net investment income or political expenditures
- 35% tax
- Unless paid for from segregated fund
  - Fund must be registered with state, FEC, or IRS
  - Donors must be disclosed





## 501(c)(3)s

No Campaign Intervention,  
But Plenty to Do

# Electoral Engagement

Our 501(c)(3) wants to be involved in the upcoming elections, but we don't want to jeopardize our tax-exempt status. What can we do? Are we allowed to talk to candidates and voters? Can we make contributions?

# Basic 501(c)(3) Rule

## No campaign intervention

-  No contributions to candidates
-  No use of corporate resources to support candidates
-  No events/activities designed to benefit a candidate
-  No endorsements

# Lots that can be done

- Interact with office holders who are candidates
- Host debates and forums
- Communicate on issues
- Send scorecards and questionnaires
- Nonpartisan get-out-the-vote and voter registration drives



# Interacting with Candidates

May urge candidates to support policies (“lobbying” candidates)

May not ask candidates to take a pledge

Should provide material to all candidates

May provide policy papers and other materials

Should not create content at the request of candidates, unless it will be shared by all

# Debates

- All candidates invited
  - May use objective criteria to create reasonable size
  - May host for one party for primary elections
- Questions must be neutral
  - Variety of topics
  - May not favor one candidate
- No endorsements



# Forums

Invite all candidates

Equal time

Equally good time

Neutral questions

Variety of questions



# Candidate Questionnaires

## Approach

- All candidates for office sent questionnaire
- Unbiased structure
- No endorsement
- No pledge of support
- No grading responses (+/-)

## Questions

- Clear and unbiased
- Subjects cover major areas of interest
- Clear issue descriptions
- Don't ask to accept a pledge

## Answers

- Reasonable time to respond
- If limited answers allowed (support/oppose), opportunity to explain position

## Format

- Questions in the guide are the same as those provided to candidates
- Answers the same as those provided, or edited for space only
- Answers presented close to the question

# Scorecards

- Regular activity
  - Not timed with election
  - End of each legislative session
- Track a variety of issues
- Include all legislators
  - Don't include candidates who are not incumbents
  - Don't mention which incumbents are candidates
- Don't editorialize

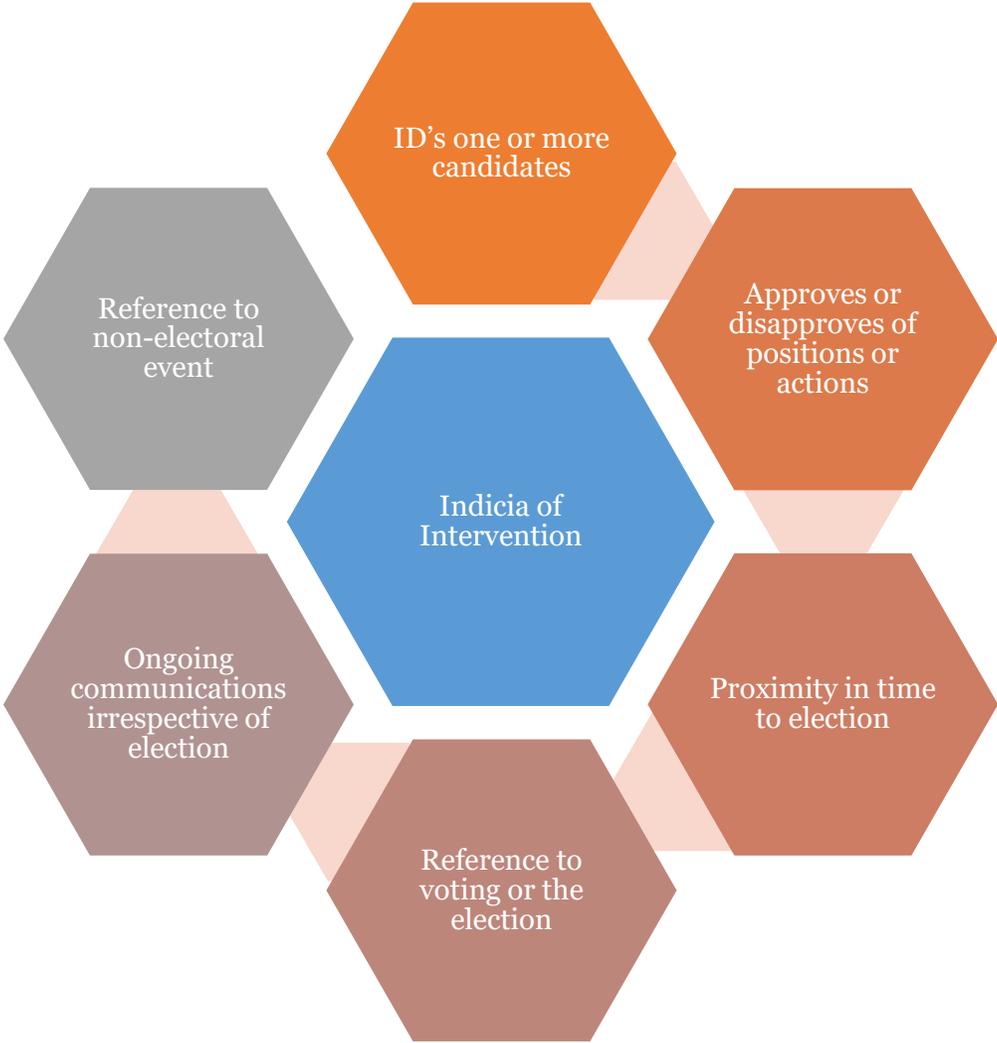
# Voter Registration and Get-Out-the-Vote Activities

- Must be nonpartisan
- No mention of candidates, or include all candidates
- May not target voters of a particular party

# Issue Ads

What about issue ads? Our 501(c)(3) already does some grassroots lobbying. Do we need to stop now that the election is coming up?

# IRS Test



## Two Similar Ads

Call Senator Smith to thank her for her vote on S. 123

- One week before election.
- S. 123 contentious issue in race.
- Not lobbying—no request to contact and bill already passed.
- Could be campaign intervention.

Call Senator Smith and ask her to vote “no” on S. 123

- Just prior to vote on bill.
- Grassroots lobbying under either test.
- Likely not campaign intervention.



# Website and Social Media

We are developing new websites for our affiliated 501(c)(3) and 501(c)(4) organizations. What should we keep in mind?

# Websites

- Treated as any other communication
- Risk of taking information from one section and linking it to a candidate on another



# Blog/Third-Party Postings

- Not clear what IRS thinks
- Include disclaimer
- Comments may be okay



# Links

- Links to candidate sites
  - Context and purpose important
  - Voter education/all candidates vs. advocacy
- Links to other sites
  - Purpose
  - Relation to advocacy
  - Number of clicks
- Links to related 501(c)(4) site okay
  - But do not merge the two sites



# Executive Endorsements

Our 501(c)(3)'s CEO would like to endorse a candidate. Is that ok? How can the organization help?

# Executive Endorsements

- May endorse in personal capacity
- May not use 501(c)(3) resources
- May use title for identification purposes
- Must disclaim organization interest



# Examples of Disclaimers

**DAILY NEWS**  
OPINIONS & OP-EDS

...And so, that is why you should vote for Joe Blow for Mayor on Tuesday.

Sally Smith is the executive director of Neighborhood 501(c)(3). The views presented here are hers and not those of the organization.

**CITIZENS FOR JOE BLOW**

Dear Bob:  
\* \* \*

Join us on Tuesday to support Joe Blow.

Sincerely,

Ben Baloney  
President  
Save the Shrews

Kent Conrad  
Chairman  
Slay the Shrews

*Titles provided for identification purposes only.*



# Fundraising by Executives

- No use of 501(c)(3) resources
  - No facilities/space
  - No mailing lists/email lists
  - May use personal contacts
- Home fundraisers
  - FEC: \$1,000 per person per candidate for food and beverage/above that in-kind contribution
  - States: varies
  - Candidate may pay



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# 501(c)(4) and (c)(6) Organizations

Some Campaign Intervention Ok

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# Electoral Engagement

Our 501(c)(4) or 501(c)(6) would like to endorse and support candidates in the upcoming elections.  
How can we get involved?

# What is Campaign Intervention?

- Facts and circumstances
  - Timing, content, background
- Intervention includes:
  - Express advocacy/independent expenditures
  - Campaign contributions
  - Contributions to political committees (e.g., super PACs)
  - Endorsements
  - Supporting a connected PAC



# Supporting/Opposing Candidates

## Federal Law

- No contributions, only expenditures

## State Law

- May have limits

## Tax Law

- May not be primary purpose

# Primary Purpose: (c)(4)

Social Welfare

Political

Education

Coalitions

Grassroots

Lobbying

Independent Expenditures

Contributions



Safe Harbor: 60%/40%

# Primary Purpose: (c)(6)

Improving Business Line

Political

Education

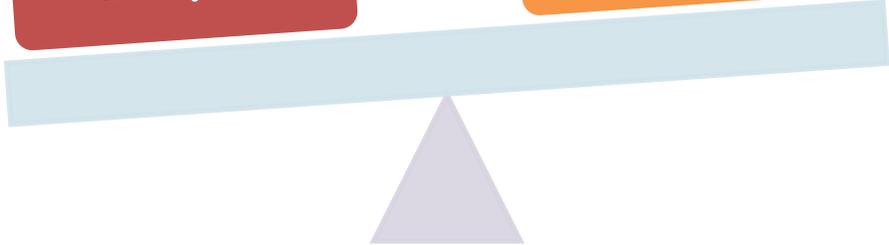
Training

Regulatory

Lobbying

Independent Expenditures

Contributions



Safe Harbor: 60%/40%

# Independent Expenditures

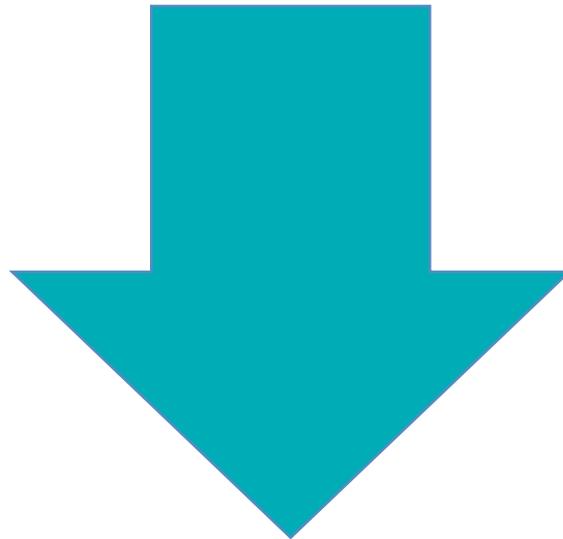
We want to run ads to support and oppose candidates. Can we do that? Should we set up a super PAC?

# Making Independent Expenditures



## Supporting Candidates

TV, radio, web, email, GOTV



## Opposing Candidates

**Must Be Independent**



# Federal Coordinated Communications



# Content

## Electioneering Communications

- Broadcast/radio/cable
- Targeted to relevant electorate
- Contains reference to candidate
- 30 days before primary
- 60 days before general

## Express Advocacy in Public Communication

- Broadcast/cable/satellite
- Newspaper
- Magazine
- Outdoor advertising
- Mass mailing (500 pieces)
- Telephone bank (500 calls)
- Other form of general public political advertising

## Reference to Candidates in Public Communications

- Reasonable time to respond
- If limited answers allowed (support/oppose), opportunity to explain position

## Republication in a Public Communication

- Questions in the guide are the same as those provided to candidates
- Answers the same as those provided, or edited for space only
- Answers presented close to the question

# What's Not a "Public Communication?"

- Anything on the Internet that is not paid for on a third-party site
  - Email
  - Blogs
  - Social media
- What is included:
  - Banner ads
  - Targeted advertising
  - Paid social media

**NOTE:** Any expenditure for republication of candidate materials is an in-kind contribution.



# Conduct

Request/ Suggestion	Material Involvement	Substantial Discussion	Common Vendor	Former Employee	Republication
<ul style="list-style-type: none"><li>• Candidate asks</li><li>• Candidate assents to suggestion</li></ul>	<ul style="list-style-type: none"><li>• Non-public information shared</li><li>• Content</li><li>• Audience</li><li>• Means or mode</li><li>• Outlets</li><li>• Timing/frequency</li><li>• Size, prominence, duration</li></ul>	<ul style="list-style-type: none"><li>• Non-public material information</li><li>• Plans</li><li>• Projects</li><li>• Activities</li><li>• Needs</li></ul>	<ul style="list-style-type: none"><li>• Same vendor within 120 days uses material nonpublic information</li><li>• Media strategy</li><li>• Audience selection</li><li>• Polling</li><li>• Fundraising</li><li>• Content development</li><li>• Production</li><li>• Voter list development</li><li>• Consulting or media advice</li><li>• May establish a firewall</li></ul>	<ul style="list-style-type: none"><li>• Employee or vendor worked for both entities within 120 days</li><li>• Uses material, non-public information</li></ul>	<ul style="list-style-type: none"><li>• Republish or broadcast candidate's materials</li><li>• May use small sections to create ads</li></ul>

# Disclosure of Independent Expenditures

## Periodic Reports End of next reporting period

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- Required of all entities that make more than \$250 in IEs for any election in a calendar year
- Disclose all payments for the IEs (name and mailing address, amount, date, purpose, whether supporting or opposing a candidate)
- Disclose contributions >\$200 received for the “purpose of furthering the reported independent expenditure”

## 48-Hour Reports 20 days or more before election

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- Required if spending more than \$10,000 for a given election
- Additional reports required for each additional \$10,00 spent
- Same information as periodic reports

## 24-Hour Reports Between 24 hours and 19 days before election

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- Required if spending more than \$1,000 between 19 days and 24 hours before election
- Additional reports required for each additional \$1,000 spent
- Same information as periodic reports

# Donor Disclosure: *CREW v. FEC*

- Court struck down FEC regulation requiring disclosure only of donors who funded particular federal IEs.
- Now must disclose all \$200+ donors who gave for the purpose of supporting the organization's attempts to influence federal elections.

# Making Federal IEs Post *CREW v. FEC*

- Must be careful with fundraising solicitations!
- Consider whether your organization should set up a separate super PAC to make IEs

# All States Allow IEs (They Have To)

- State disclosure laws differ
- Structure of IE committees (super PACs) differ
- Coordination rules differ



# Contributions

How can we make contributions to state and federal candidates and political parties? Should we form a PAC?

# Federal Contribution Limits

	To a Candidate	To a National Party Committee	To State and Local Parties
Individual May Give	\$2,900 per election	\$36,500 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	\$2,900 per election	\$36,500 per year*	\$10,000 per year
Corporations and Nonprofits May Give	Prohibited	Prohibited	Prohibited

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



# Things to Consider

- Restrictions on contributing during the legislative session
- Limits on lobbyist contributions/fundraising
- Board authorization requirements
- 527(f) tax
- Some states require donor disclosure

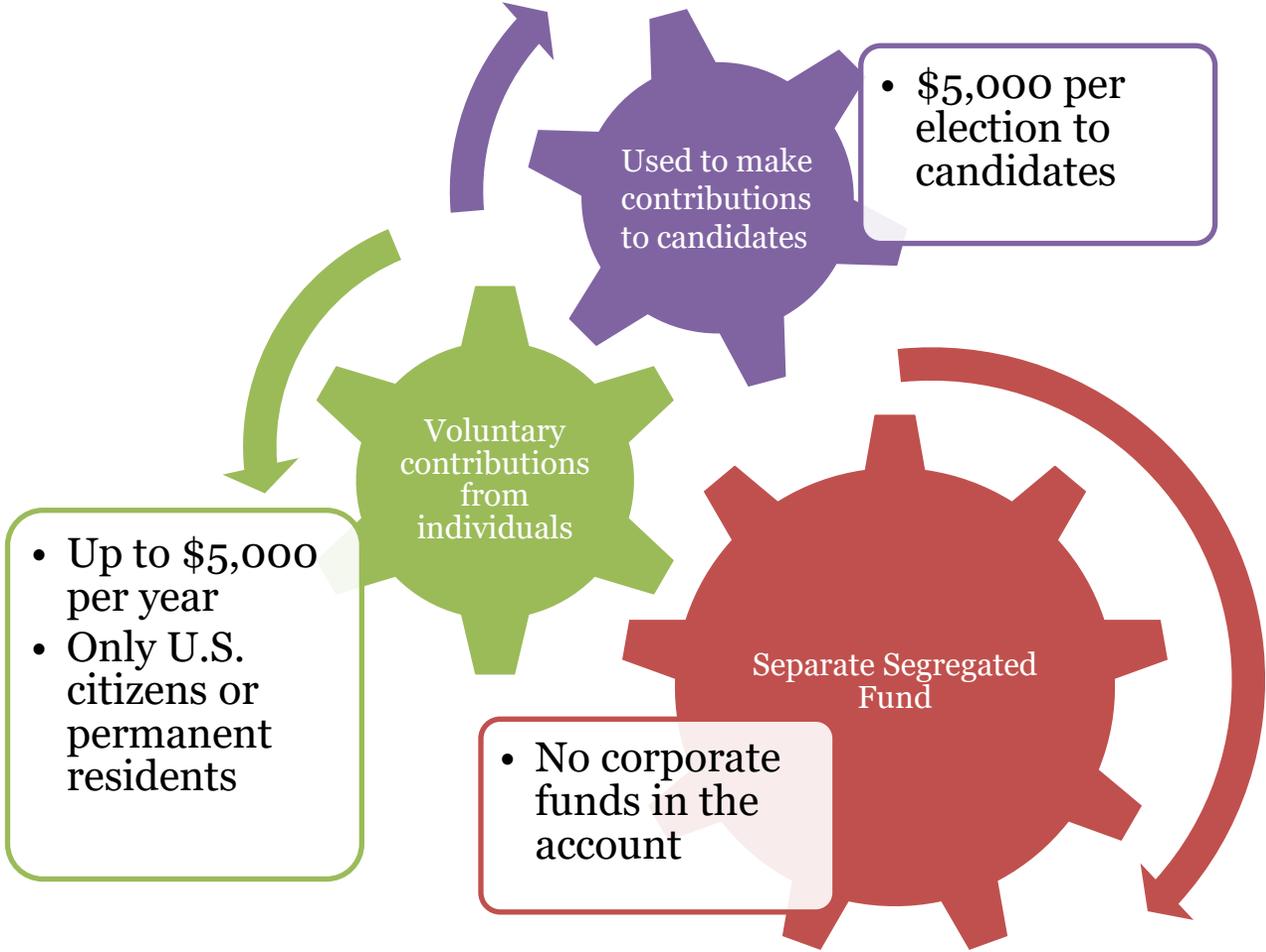
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# Political Action Committees

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# Political Action Committees



# Connected Versus Non-Connected

## Non-Connected

- No related corporation
- May solicit any U.S. citizen
- All administrative costs paid by PAC

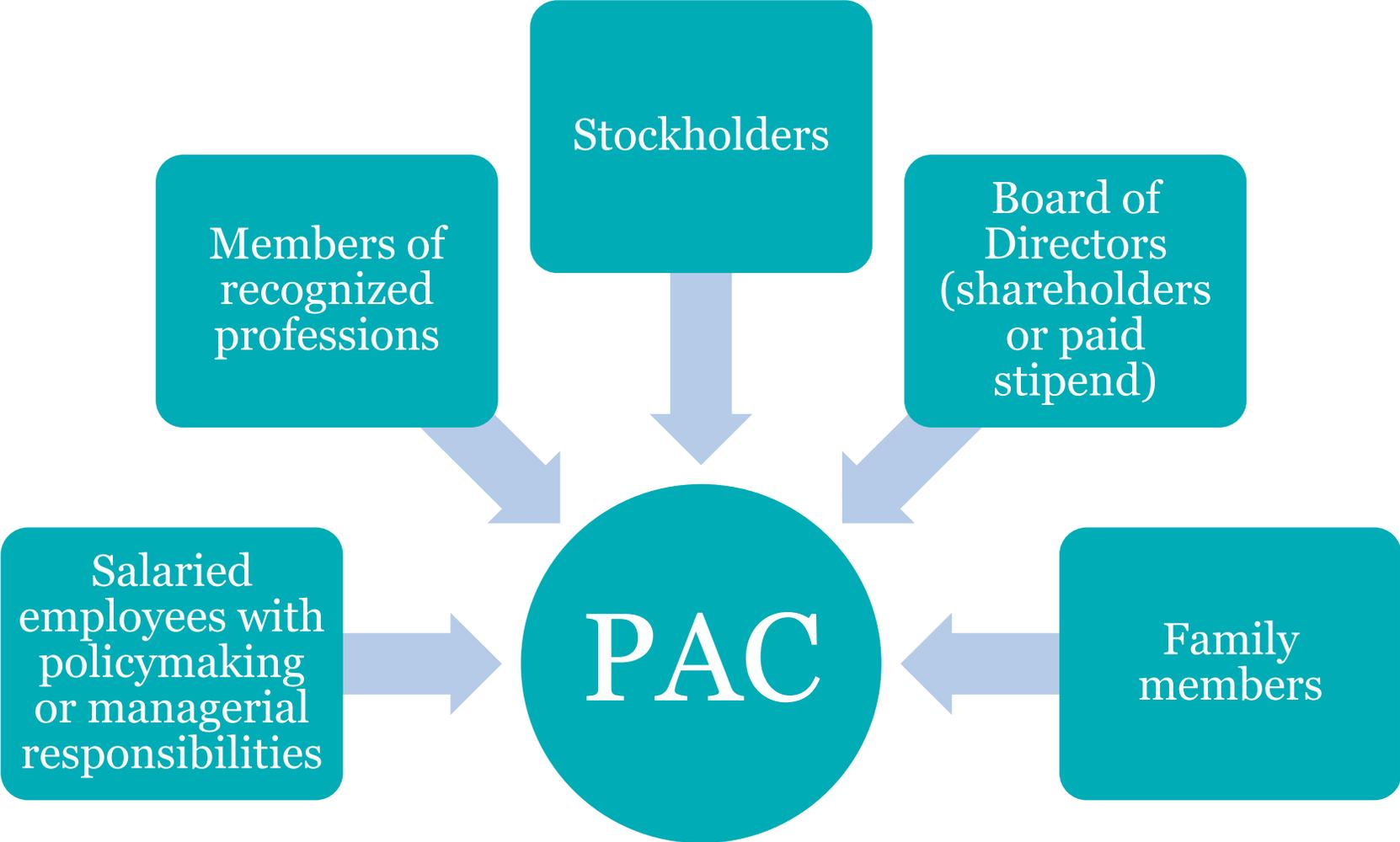
## Connected

- Related corporation
- May pay for administrative costs
  - Fundraising costs
  - Compliance costs
- May only solicit restricted class
- May accept contributions from any U.S. citizen

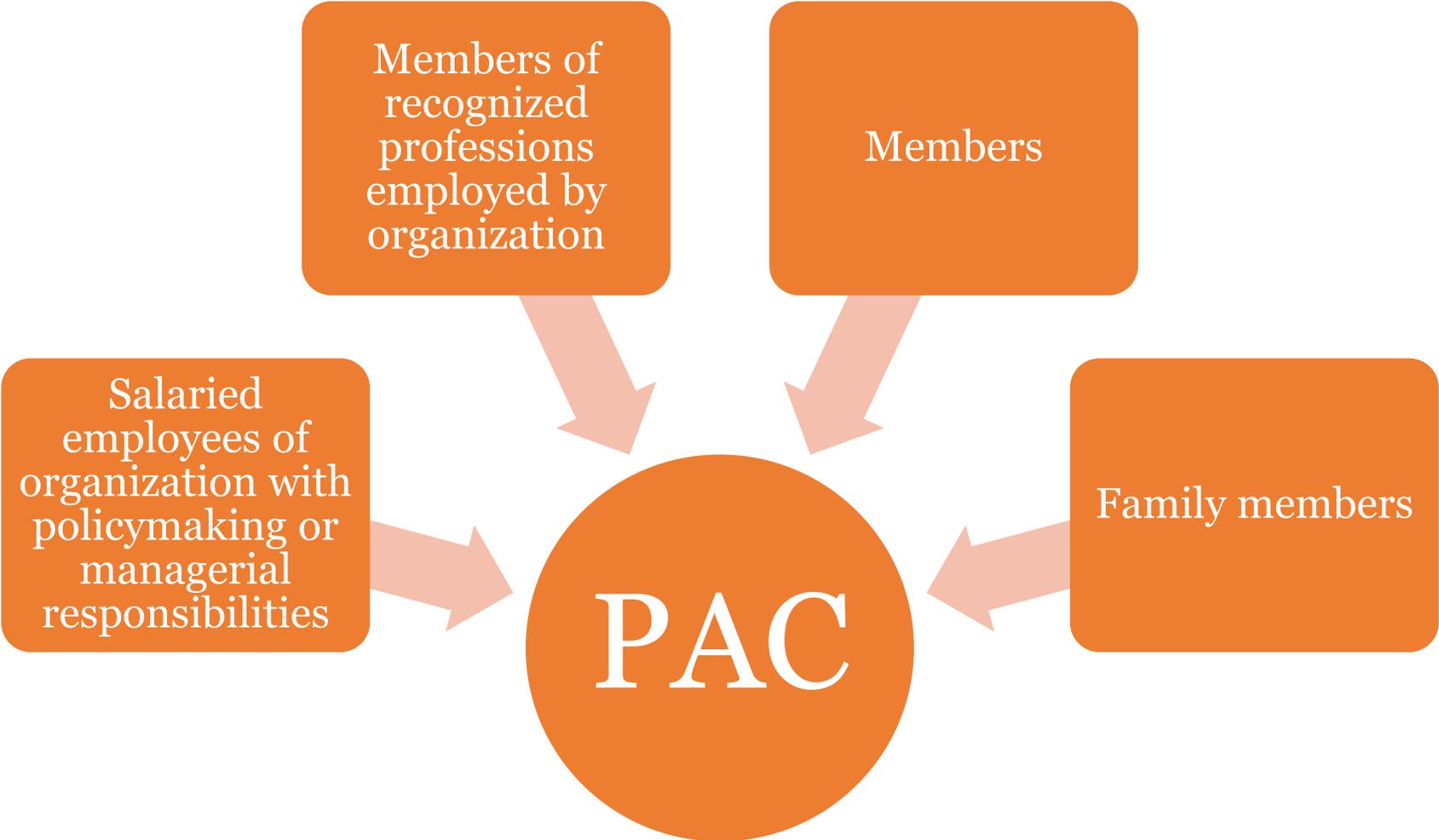
# Restricted Class

- The individuals who may be solicited to make contributions to the PAC
- Varies by type of connected organization:
  - For-profit corporation
  - Membership organization
  - Trade association

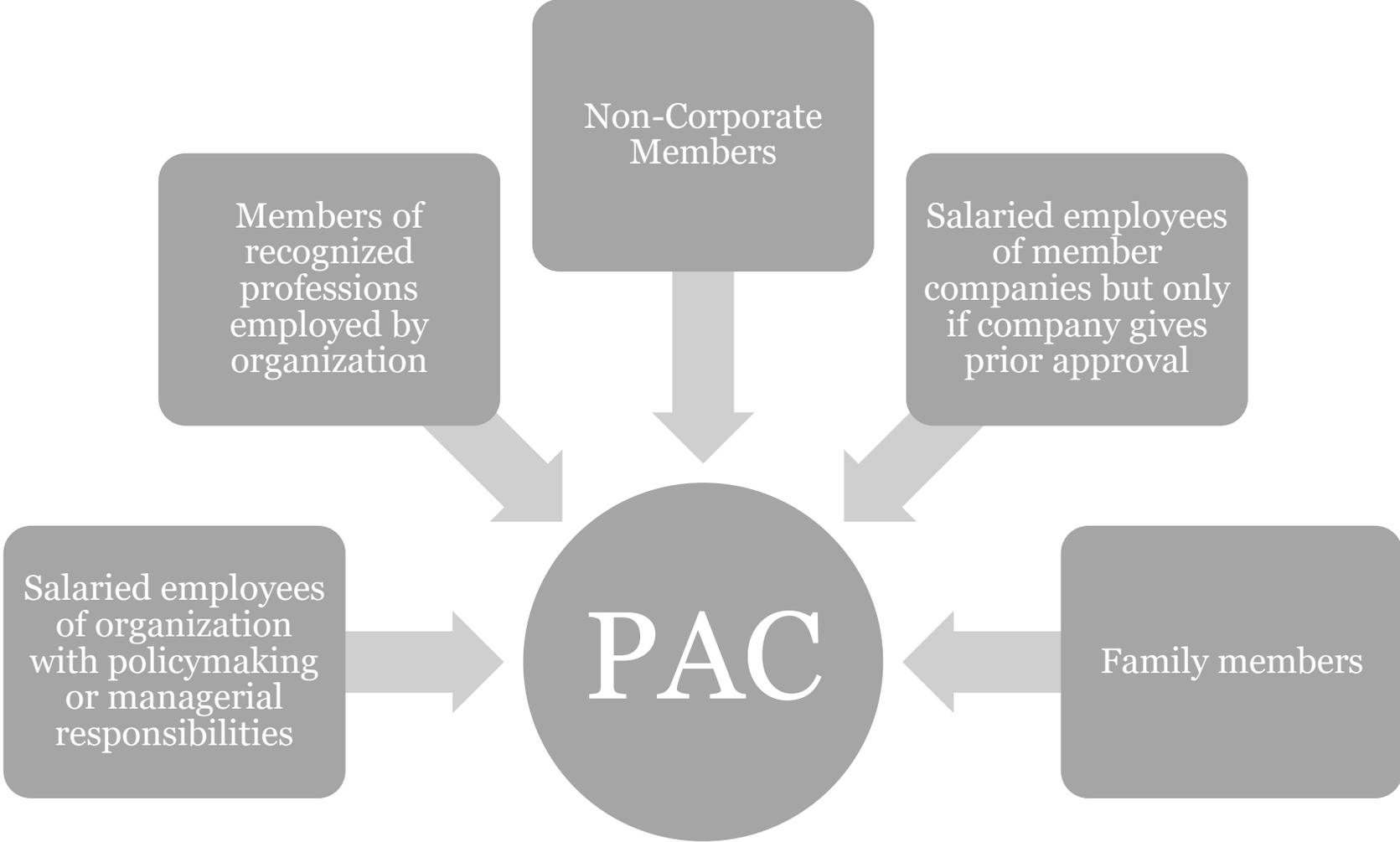
# Corporation Restricted Class



# Individual Membership Organization Restricted Class



# Corporate Membership Organization Restricted Class



# Trade Association Solicitation

- May only solicit executives of member companies if the member gives prior approval
- Only one association per company per year
  - Applies to member company, not parent or subsidiary
- Must be in writing
- Company may limit scope
- May include sample solicitation

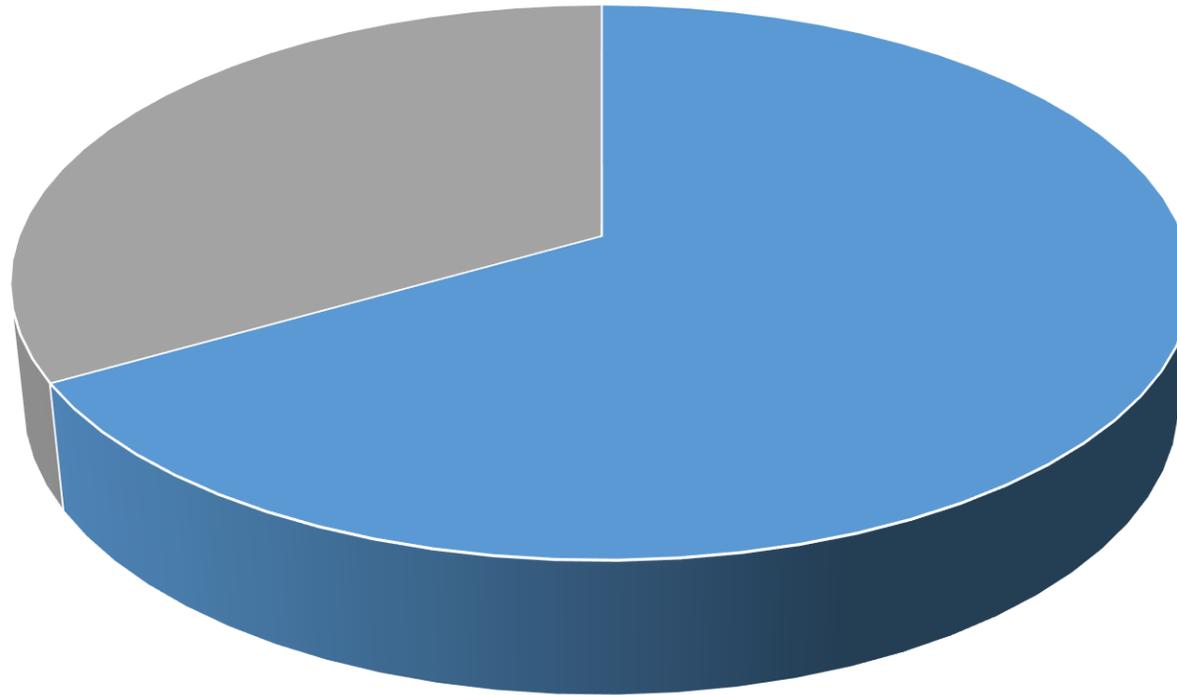


# PAC Incentives

- 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 per
  - 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 organization
- 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

- Quarterly
- Plus pre-primary reports where needed

**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



# Contribution Limits

- New PAC: \$2,900 per election to candidate
- Multi-Candidate PAC: \$5,000 per election to candidate
  - In existence for six months
  - Made contributions to five candidates
  - Received contributions from 50 different contributors

# 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

# Restricted Class Event

- 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

# Questions?

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