

Knowing Your Political Limits Part II: 501(c)(6) Organization PACs

Latitude for 501(c)(6) organization political activity is much greater than for 501(c)(3)s, but there are still many restrictions.



Robert M. Portman



Jerald A. Jacobs

In last month's column, Rob Portman discussed the limits on political activities for 501(c)(3) organizations. The wider latitude of 501(c)(6) trade and professional associations, compared to 501(c)(3) entities, to engage in political activities gives rise to complex regulations. Here Portman concentrates on some key restrictions at the federal level on one major area: political action committee (PAC) solicitations. Be aware, however, that there are many other rules governing PAC organization and operation, lobbying representation, and disclosure, as well as other state and local laws that may govern an association's political activity.

—Jerald A. Jacobs, ASAE General Counsel

Political action committees (PACs) are governed by the Federal Election Campaign Act and regulated by the Federal Election Commission. The FEC rules are lengthy and complex. Generally speaking, while it is unlawful for a 501(c)(6) association to use its own funds to make contributions to federal candidates, association funds may be used to establish and administer PACs, which in turn may solicit political campaign contributions from association members and contribute those funds to candidates. Funds contributed to a PAC must be held in a separate bank account from the general association treasury.

PAC contributions must be voluntary, the PAC may not charge membership dues or fees, and PACs may not accept contributions of more than \$5,000 per calendar year from any one contributor. Of the numerous regulations governing PACs, the following are limited to the key rules that apply to solicitations.

Solicitation eligibility

An association PAC may only solicit contributions from its members and staff. It may *not* solicit contributions from the gen-

eral public or nonmember corporations. The FEC has ruled that an association may not solicit from its *associate* members where those members "do not have the right to vote at any meeting or have any voice in the association or any control over its officers." The FEC has a pending rulemaking to define association *members* for this purpose.

In addition, there are a number of restrictions that apply to the groups an association may legally solicit for PAC contributions.

- **Association members and staff.** There are no restrictions (other than financial limits) on solicitations of the association's *noncorporate* members (including partnerships) and their families. The association may also solicit contributions from certain association executives and administrative personnel and their families *without restriction*, and from its other employees *only twice per year by letter mailed to the employees' homes*.

- **Corporate members.** An association may solicit contributions from certain individuals affiliated with the association's corporate members—executive and administrative personnel, stockholders, and their families—*after receiving advance approval* from

the member corporation. The approval must be "separate and specific" and in writing. Contributions may not be solicited from any other employees of a corporate member. Each member corporation can give approval for solicitation by only one federal-level, association-related PAC for each calendar year.

The association must keep records of all approvals and of association members who do not require advance approval for solicitation. Records must be kept for three years after the year for which the approval applies.

Solicitation methods

PAC solicitations in any form must state the political purpose of the PAC and that those solicited may decline without retaliation by the association or the individual's corporate employer. Solicitations should identify contribution limits, state the

PAC's obligation to report contributions of more than \$50 and aggregated contributions of more than \$200 in a calendar year, and give a clear and conspicuous notice of non-deductibility for tax purposes.

• **Dues statements.** The association may place a voluntary check-off designation for a PAC contribution on its dues statements as long as no corporate PAC contributions are solicited and no portion of the dues is used as a PAC contribution.

• **Mailings.** Subject to the advance approval requirement, there is no prohibition against including solicitation materials with other routine association mailings. The association may publish a form for obtaining such solicitation approval from corporate member representatives in a newsletter or other association publication, but the wording of the form must make clear that it is a request

for *approval to solicit* rather than a solicitation itself.

• **Oral solicitations and distributions** of solicitation materials at association seminars, meetings, or conventions attended by corporate member executives or stockholders may be made only if the association PAC has received advance written approval from the corporate member individuals in attendance.

The foregoing provides a thumbnail sketch of relevant rules for PAC solicitations by 501(c)(6) associations. Associations interested in engaging in political activities are encouraged to consult with the FEC's regulations and other public documents for more specific information and guidance.

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Robert M. Portman and Jerald A. Jacobs are partners at Jenner & Block's Washington, D.C., office. Jacobs edits this column.