

## Policy & Political Law



OCTOBER 20, 2020 • NO. 1

### 11th Hour Campaign and Lobbying Activities: Top Compliance Concerns for Businesses and Their Employees

*With the 2020 campaign in its homestretch and the 2021 inauguration on the horizon, an unprecedented rush of political and policy activity is expected no matter which party wins control of the White House or Congress. Companies, executives, and legal counsel should be hyper aware of the intricacies, nuances, and regulatory layers of campaign finance, ethics, and lobbying rules to avoid making costly mistakes that could result in negative publicity or, worse yet, generate civil or criminal complications. Featured here, our Policy & Political Law team answers common questions in the top five areas of political law that have the most room for risk.*

#### **CAMPAIGN FINANCE COMPLIANCE**

##### **Can corporate resources be used for hosting a candidate fundraiser (including virtual events)?**

At federal level and in more than 20 states, campaign finance laws prohibit corporate contributions to support candidates. If no exception is available under federal law, companies should consider having the candidate committee reimburse them for identifiable costs or having a company Political Action Committee (“PAC”) or individual executives pay for such costs, subject to applicable contribution limits.

If a nonfederal candidate is involved and no corporate prohibition exists, state or local law still may apply contribution limits to fundraiser costs paid by the company. Counsel should explore whether costs fit under the limit and, if not, the company needs to have the candidate committee pay for costs or have a company PAC or have executives pay

for costs, subject to applicable contribution limits. And remember, in-kind contributions must be reported by the recipient committee, so companies must provide information about the event’s value.

##### **What can executives do on their own?**

Executives and their friends and family members can each make personal contributions up to the applicable contribution limit under federal law or up to a state’s individual limits under state law.

If an executive plans to contribute to a “joint fundraising committee,” they must be careful to assure that no part of their contribution is allocated to cause the donor to make an excessive contribution to any of the different participating committees.

The use of personal resources to pay for a fundraising event creates an in-kind contribution, which must fit under the limit under applicable law. However, there are some exceptions, like the federal allowance for \$1,000 in food, beverage, and invitation costs for an event at one's home.

#### **What donations to Super PACs or (c)(4) or (c)(6) groups get disclosed?**

Federal Super PACs must report donors and payees to the Federal Election Commission if the donor's aggregate contribution for the year exceeds \$200. 501(c)(4) organizations (*i.e.*, social welfare groups) and (c)(6) organizations (*i.e.*, trade associations or business leagues) no longer must identify donors by name and address on Form 990 Schedule B, but under campaign finance law, if a (c)(4) or (c)(6) spends for an "independent expenditure," it now has to publicly report donors who gave "for the purpose of influencing any federal election."

Companies or other donors to a (c)(4) or (c)(6) should check with counsel to see if designating a donation as "general purpose" or "nonpolitical" can prevent disclosure.

### **TRANSITION AND INAUGURAL ACTIVITY RESTRICTIONS**

#### **What support can be given to a "transition" effort?**

The Presidential Transition Act of 1963 authorizes government resources to be used for a presidential nominee's transition team before and after the general election. But the law also contemplates that the nominee can set up a separate 501(c)(4) entity to raise funds to assist with the transition. Donations are capped at \$5,000, and the donations are publicly reported after the inauguration. Many state jurisdictions have similar rules regarding gubernatorial transitions.

#### **What support can be given to an inaugural committee?**

At the federal level, an inaugural committee is a distinct committee that the president-elect creates to receive funds to pay for inaugural events, including swearing-in, parade, entertainment events, and balls. Unless the president-elect chooses to impose stricter rules, the inaugural committee can accept unlimited contributions from almost any source. Public disclosure of donors is required, though.

### **"REVOLVING DOOR" RULES**

#### **What recusal requirements exist for government employees seeking a new job?**

At the federal level, there are disclosure obligations and recusal requirements for government employees seeking a new job. Businesses need to be aware of both the disclosure implications and the possibility of a potential hire being recused from acting on matters of importance.

#### **What recusal requirements exist for company employees going into government?**

Awkward issues are raised when company employees seek employment in government. Federal rules prohibit Executive Branch employees from participating in particular matters that involve a personal financial conflict of interest (*e.g.*, ownership of stock in prior employer). Normally recusal is required if participation would have an effect on the financial interest of their former employer. For example, if a company employee was given "extraordinary payment" in excess of \$10,000 as severance, that employee is disqualified for two years from any matter in which the company is a party. There are also executive orders and congressional rules to consider. Similar executive or legislative branch restrictions can apply to employees going to state or local government as well.

#### **What about a company employee wanting to help the "transition" team of a nominee?**

The law is unclear on volunteering for transition work. Generally, if working for the transition committee, campaign finance laws and "revolving door" and similar ethics rules for "federal employees" do not apply.

### **SCHMOOZING WITH NEWLY ELECTED OFFICIALS**

#### **What gift restrictions apply before swearing-in and after swearing-in?**

If a newly elected person is not yet a government official, normally no gift restriction is applicable, but if such person already is a government official, some sort of gift rule almost certainly will be in effect. At the federal level, House and Senate gift rules are applicable to members and staff, and separate but similar gift rules are applicable to Executive Branch employees.

Careful planning is necessary so that ‘gift’ rules, other ethics restrictions, and campaign finance laws are not violated when planning ‘meet and greet’ or fundraising events.

### **LOBBYING ON POLICY**

#### **What lobbying disclosure laws are triggered?**

In companies’ zeal to meet with newly elected officials, some communications may trigger lobbying registration or reporting consequences. Companies not registered may have to; company personnel not listed as lobbyists may have to be; expenses may have to be disclosed. Companies must know what are the definitions of lobbying and what are the thresholds triggering registration and reporting.

At the federal level, the Lobbying Disclosure Act governs these activities, although a business with foreign ownership or control may have to deal with the Foreign Agent Registration Act.

Blank Rome advises businesses and reviews and develops compliance programs covering the full range of activities described above. The Firm’s [Policy & Political Law](#) team provides legal services through Blank Rome LLP, and is also a part of [Blank Rome Government Relations LLC](#), which handles high-level government relations matters for many clients.

As chair of Blank Rome’s Policy & Political Law practice group, [Scott E. Thomas](#), a former Federal Election Commission chairman, focuses on campaign finance, ethics, and lobbying law. His extensive and distinguished background in the area of political law is a valuable resource in providing guidance and assurance to clients who need to interact with government officials or want to engage politically.

#### **For additional information, please contact:**

**Scott E. Thomas, Washington, D.C. Office**  
Partner, Blank Rome LLP  
Senior Principal, Blank Rome Government Relations LLC  
202.420.2601 | [sthomas@blankrome.com](mailto:sthomas@blankrome.com)

**Javeriya Dunn, New York Office**  
Director of Business Development  
212.885.5321 | [jdunn@blankrome.com](mailto:jdunn@blankrome.com)