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**The Organization and Operation  
of a Corporate  
Political Action Committee**

**Myles V. Lynk**

*Dewey Balantine LLP  
Washington, D.C.*

# The Organization and Operation of a Corporate Political Action Committee

Myles V. Lynk

*Corporations can't make federal election campaign contributions out of their treasury funds, but they can establish corporate PACs to make them. With some attention to the contribution limits and the solicitation rules, your corporate client can safely participate in the federal election process.*

**D**O YOU HAVE A CORPORATE CLIENT that wants to make contributions to a federal election campaign? If you do, that client probably has questions about the kinds of contributions it can make, when it can make them, and in what form. The client probably also has questions about the kinds of activities it can engage in, particularly with

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Myles V. Lynk is a partner in the Washington, D.C., office of Dewey Ballantine LLP.

respect to soliciting contributions. If the client has such questions, you need to know about the organization and operation of federally qualified corporate “separate segregated funds,” commonly known as political action committees or PACs. PACs are regulated by the Federal Election Commission (“FEC”) pursuant to rules promulgated under the Federal Election Campaign Act of 1971, as amended.

**ORGANIZATION AND CONTRIBUTION LIMITS** • A corporation is prohibited from using its general treasury funds to make contributions or expenditures in connection with federal elections. Under federal law, a corporation may establish a separate segregated fund to make such contributions and expenditures; such a fund is called a “political committee,” and the corporation that established it is the “connected organization” to the PAC.

#### **Presence on the Internet**

Existing and newly organized PACs may establish a presence on the Internet, such as a home page on the World Wide Web. The FEC’s home page is at [www.fec.gov](http://www.fec.gov). From its Internet site, a PAC may send and receive appropriate communications, in addition to accepting qualified contributions, as set out below.

#### **Multicandidate Committees**

In addition to being a “political committee,” the PAC may also qualify under federal law as a “multicandidate committee.” A multicandidate committee is any political committee that has:

- Received contributions from more than 50 persons;
- Been registered with the FEC for at least six months; and
- Contributed to at least five federal candidates.

Most PACs quickly become multicandidate committees. As a multicandidate committee, the PAC may, under current law, contribute up to the following amounts in connection with a federal election:

- \$5,000 per candidate or authorized candidate committee per federal election;
- \$15,000 in a calendar year to any political committee established and maintained by a national political party;
- \$5,000 in any calendar year to any political committee *other* than an authorized federal candidate committee or political committees established and maintained by a national political party (for example, to other PACs); and
- An unlimited amount to promote an individual’s selection as a *dele-*

gate to a national presidential nominating convention, but only \$5,000 to a delegate's committee.

### **Contributions to Non-federal Elections**

A federally qualified PAC may also make contributions to or expenditures in connection with non-federal elections. This may be done by making a contribution to the non-federal account of a national political party committee (such as the Democratic National Committee and the Republican National Committee). All receipts and disbursements, including those pertaining to non-federal activity, must be reported to the FEC, except as noted below. Contributions to non-federal elections are subject to applicable state and local laws.

### ***Building Funds***

There is no requirement to report to the FEC donations to the non-federal accounts or "building funds." Originally, a building fund was a trust fund established by a political party to accept corporate contributions to defray the cost of purchasing (but not operating) an office facility of state party committees. State or local law, however, may require that such contributions be reported to state or local election authorities.

### ***Soft Money***

The FEC is increasing its regulation of the contribution of money that is raised under state laws supposedly for non-federal elections or party building funds, but is used to influence federal elections. This type of contribution is sometimes referred to as "soft money" because it is presently unregulated. Campaigns (especially presidential campaigns) have increasingly used soft money in states where state campaign finance laws are less strict than federal laws.

### ***Verification of Non-federal Use***

When contributing to a national party committee for non-federal elections, a PAC should insist on being provided with written verification that the funds will be used for non-federal elections. If a party committee solicitation "makes reference to a federal candidate or a federal election," the contribution it seeks will be presumed by the FEC to be used for federal election purposes, and the PAC will be subject to federal limits and regulations. The presumption may only be rebutted by demonstrating that the funds were solicited with "express notice" that they would not be used for federal election purposes.

### ***Affiliation with Other PACs***

All political committees established, financed, maintained or controlled by different parts of one or

ganization are “affiliated.” This means that political committees established by a parent, subsidiary, branch, division, department, local or regional unit of a corporation are affiliated.

***Effect of Affiliation on the Contribution Limit***

An individual’s contributions to different affiliated PACs count against one contribution limit. The \$5,000 limit on the amount a separate segregated fund may receive from each donor and may contribute to each federal election candidate, applies to all separate segregated funds that are affiliated with each other. Thus, if a corporation has more than one PAC, and an employee contributes \$3,000 to one of the PACs in a calendar year, that employee may only contribute up to \$2,000 to another PAC established by that corporation, or by a parent or subsidiary of that corporation, in the same calendar year.

Similarly, if one of the corporation’s affiliated PACs contributes \$3,000 to a federal election candidate’s primary campaign, all other PACs established by the corporation or its parent or subsidiary may not contribute more than \$2,000 to that same candidate’s primary election campaign. It is therefore very important for affiliated PACs to inform

each other of their receipts and contributions to ensure that they do not exceed their joint contribution limits.

A federally qualified PAC sponsored by a corporation that is a parent or subsidiary of another corporation must report its affiliation with the other PACs, if any, sponsored by its parent or subsidiary organization or other subsidiaries of the parent corporation to the FEC. Companies that have several affiliated PACs should periodically evaluate the need for them.

**The Role of the PAC Treasurer**

By law, every PAC must designate an individual to serve as its treasurer. The treasurer shall accept contributions, make expenditures, maintain records, and sign and file all required reports with the FEC. In the treasurer’s absence, a designated assistant treasurer shall assume the duties of treasurer. Specifically, the treasurer and assistant treasurer (hereinafter “treasurer”) have the following responsibilities under the law:

- *Deposit receipts.* The treasurer must see that all receipts are deposited in a separately maintained “campaign depository,” which must be a federally insured financial institution. Contribution deposits must be made within 10 days of the treasurer’s receipt of contributions;

- *Authorize expenditures.* Although the PAC may have a committee or board that votes on what contributions or expenditures the PAC will make, the treasurer must authorize the actual expenditures or appoint an agent to authorize expenditures of the PAC's funds;

- *Keep records.* The treasurer must ensure that the PAC complies with all recordkeeping requirements of the FEC. These include recording the receipt of contributions to the PAC, disbursements by the PAC, and the transfer of funds from or to an affiliated PAC. The treasurer must use his or her best efforts to obtain the information required by the FEC for these records. All records and accounts of the PAC must be retained for at least three years after the filing with the FEC of the annual or quarterly reports to which such records relate;

- *Sign reports.* The treasurer must sign the PAC's reports and statements filed with the FEC; and

- *File reports.* The treasurer is responsible for the timely, complete, and accurate filing with the FEC of all required reports and statements.

### **May a Connected Organization (Sponsoring Corporation) Contribute to Its Own PAC?**

Federal law prohibits corporations from using their general treasury

funds to make direct or indirect contributions or expenditures in connection with any federal election. A corporation *may*, however, use its general treasury funds to establish, administer, and solicit contributions to its PAC, which will make contributions to federal election campaigns.

For example, general treasury funds may be used to pay for office space, telephone, salaries, utilities, supplies, legal and accounting fees, fundraising, and other expenses incurred in establishing and operating a PAC.

As a means of encouraging contributions to its PAC, a corporation may match an employee's contribution to its PAC with a donation to a section 501(c)(3) charity, as defined under the Internal Revenue Code, chosen by the employee. The corporation should not, however, use the establishment, administration, and solicitation process as a means of exchanging treasury monies for voluntary contributions. When using raffles or entertainment to raise funds for the PAC, the PAC should reimburse the corporation for any costs that exceed one-third of the amount of the money contributed.

### **What Is a Solicitation?**

There are restrictions on how a corporation and its PAC may solicit contributions to the PAC. Therefore, it is important to understand what

constitutes a "solicitation." The FEC has determined that a solicitation is "any action that could fairly be considered a request for a contribution." See FEC Advisory Opinion 1976-96. Such actions include the following:

- Direct requests for monetary contributions to the PAC. For example, a request to purchase tickets for a fundraising event for the PAC *is* a solicitation;
- Announcements in newsletters or other publications that *encourage support* of PAC activities or provide information on *how to contribute* to the PAC are solicitations. For example, publication of the PAC's right to accept unsolicited contributions, a description of PAC fundraising activities and events, or the publication of commendations of those who contribute to or otherwise participate in PAC activities, constitute solicitations. On the other hand, a newsletter in which a PAC presents views on particular issues, but which does not otherwise discuss fundraising or encourage employee support, is not a solicitation; and
- Operation by a PAC of a fundraising booth at a trade association convention.

By contrast, merely announcing the PAC's existence, or publishing factual, historical, or statistical information regarding the PAC, is *not* a solicitation.

Any communication that might be deemed a solicitation must meet and comply with all of the requirements discussed below with respect to the manner in which solicitations may be made and the persons to whom they may be directed.

### **Who May Be Solicited?**

#### **Restricted and Expanded Classes**

A corporation's shareholders, employees, and their families may be solicited for contributions to the PAC. For purposes of PAC solicitations, a corporation's employees are divided into two classes, a "restricted class" of shareholders, executive and administrative personnel and their families, and an "expanded class" of all other employees. Different rules apply to the solicitation of contributions from each class, as discussed more fully below.

### **Solicitation of General**

#### **Public Prohibited**

A corporation may not solicit the general public or foreign nationals for contributions to its PAC. A PAC may, however, *accept* unsolicited contributions from any person who otherwise may legally make a contribution. A corporation and its PAC may not solicit, accept, or receive contributions to the PAC from a foreign national, or any individual who is not lawfully admitted for permanent residence in the United States.

### **Accidental Solicitations**

Accidental or inadvertent solicitations of persons who may not be solicited for contributions to the PAC are not violations of the law if:

- The improper method of solicitation is corrected immediately after the discovery of such erroneous solicitation; and
- The amount of the contribution is returned to the contributor after the error has been discovered.

### **Must Contributions Be Voluntary?**

Yes. Contributions to a PAC must be voluntary; they may not be secured by the use or threat of physical force, job discrimination, or financial reprisal. *Persons being solicited should always be informed, preferably in writing, that the decision to contribute, and the amount of any contribution, are strictly voluntary.* Fees, dues, or other monies required of employees by their employer as a condition of their employment, or money obtained by the PAC in any commercial transaction, may not be used by the PAC in connection with its activities.

### **What Is the Extent of Disclosure Required as Part of a Solicitation?**

Whenever a solicitation is made, whether orally or in writing, the person being solicited must be informed of:

- The political purposes of the PAC; and
- His or her right to refuse to contribute without any reprisal as a result of such refusal.

### **How Are the Required Disclosures To Be Made?**

Both written and oral solicitations must contain the disclosures set out above. Only solicitations of members of the "restricted class" may be oral. The twice-yearly solicitation of members of the "expanded class" *must* be in writing and may be made only twice in each calendar year. Solicitations must be accompanied by written disclosures. The FEC has issued regulations clarifying the use of disclaimers on campaign communications. Disclaimers must be "clear and conspicuous," meaning that they must not be difficult to read or be easily overlooked. Further, all materials included in a package that would require a disclaimer if distributed separately must contain the disclaimer, even if they are included in a package with solicitations or other materials that already have a disclaimer.

If the solicitation is made orally, the disclosures should be included in a solicitation script to be read by the solicitor. To ensure that the required disclosures are given, a printed con-



tribution form should be included with the materials sent after the oral solicitation. This form should be completed, signed, and returned by the contributor along with the contribution, confirming receipt and understanding of the disclosures.

**Can Guidelines Be Used for Contribution Amounts?**

Yes. Guidelines for contribution amounts *may* be included as part of the solicitation. If guidelines are included, however, the persons being solicited must also be informed that:

- Individuals are free to contribute more or less than the guidelines suggest; and
- The corporation will not favor or disfavor anyone by reason of the amount of their contribution or their decision not to contribute.

**What Are the Limits on Individual Contributions to PACs and Restrictions on Solicitations?**

The following limitations apply to solicitations and individual contributions:

- An individual may contribute up to \$5,000 per calendar year to a PAC that has qualified as a multicandidate committee. If the contributor “earmarks” his contribution by directing that it be sent to a particular candidate, or if the contributor knows his contribution will be expended on

behalf of a particular candidate, the contribution will also be deemed a contribution by the individual to the candidate, subject to the \$1,000 per candidate per election limitation. The PAC may not accept prohibited contributions, or contributions that exceed \$5,000 per year, from any individual contributor;

- The spouse of a corporate employee, even if he or she has no income other than that earned by the employee, may contribute in his or her own name in the same manner and up to the same limitations as the shareholder or employee-spouse;
- Children of corporate employees and shareholders, including those under 18 years of age, may also contribute up to \$1,000 per candidate per election, subject to three conditions. First, the decision to contribute is knowingly and voluntarily made by the minor child. Second, the funds contributed are owned or controlled exclusively by the child. Third, the contribution is not made from the proceeds of a gift, the purpose of which was to provide the funds to be contributed, and is not in any other way controlled by another individual; and
- A PAC may not accept cash contributions in excess of \$100 from any contributor, or anonymous contributions in excess of \$50. In practice, the PAC should not accept any cash or anonymous contributions. Contri-

butors should contribute by personal check, but in the case of contributors who are members of the restricted class, contributions may be made by payroll deduction.

**SOLICITING CONTRIBUTIONS FROM A CORPORATION'S "RESTRICTED CLASS"** • A corporation's "restricted class" includes its stockholders, if any, and their families, and the corporation's executive and administrative personnel and their families. Corporations and PACs may also solicit contributions to the PAC from the executive and administrative personnel and their families of the corporation's branches, subsidiaries and affiliates. Further, executives of partnerships of which the corporation is the controlling partner may be solicited, and executives and administrative personnel of franchisees may also be solicited. The term "executive and administrative personnel" means individuals who:

- Are employed by the corporation;
- Are paid on a salary rather than an hourly basis. (Individuals who are paid on commission may be considered "executive or administrative personnel" if they otherwise fit the definition of that term); and
- Have policymaking, managerial, professional, or supervisory respon-

sibilities. This definition includes individuals who run the corporation's business, such as officers, other executives and plant, division, and section managers, and individuals following recognized professions, such as lawyers, engineers, or accountants.

The term "executive and administrative personnel" does not include:

- Professionals who are represented by a labor organization;
- Salaried foremen and other salaried lower level supervisors having direct supervision over hourly employees;
- Former or retired personnel who are not stockholders; or
- Individuals (such as consultants) who are paid by the corporation but who are not "employees" within the meaning of the Internal Revenue Code provision dealing with the withholding of income tax on employee wages.

Those staff employees who practice a recognized profession in support of the company's business function (for example, lawyers, certified public accountants) are considered "administrative personnel." A company should consider whether it wishes to solicit contributions from all administrative personnel as members of the restricted class, or only from those who are also "executives."

### **Methods of Soliciting the “Restricted Class”**

The following rules apply to solicitation of members of a restricted class:

- There are no requirements regarding the form of solicitations of the restricted class as long as such solicitations fulfill the “voluntariness” and disclosure requirements discussed above;
- Spoken solicitations may be made in person or by telephone, at meetings or fundraising events, to individuals separately or in groups. Spoken solicitations should be made in accordance with a solicitation script containing all requisite disclosures, and be accompanied or followed by written solicitation materials which also contain such disclosures;
- Written solicitations may be mailed or hand-delivered to the recipient. Computerized mailing labels may be used. Stamped, pre-addressed return envelopes may be enclosed with the solicitation request;
- At the end of each year, the PAC may wish to send statements to those who contributed in that year, listing each contribution and the total amount contributed;
- Solicitations to restricted class members may be included in a corporation’s internal corporate publica-

tions, if the solicitation contains the requisite disclosures and the circulation of the publication is limited to members of the restricted class. If the publication is also distributed to a few non-solicitable individuals, the published material should include an explicit caveat stating that contributions will be screened and contributions from individuals outside the restricted class cannot be accepted and will be returned;

- An article in a corporate newsletter containing only factual, historical, or statistical information regarding the PAC is not a solicitation and may therefore be circulated beyond the restricted class. PAC newsletters, if any, should be informational only, since such newsletters are likely to be distributed to all contributors and potential contributors, including employees outside the restricted class (if it is decided to solicit such employees);
- All solicitations and announcements regarding the PAC must avoid coercion and the appearance of coercion. For example, it is recommended that the names of contributors and the amounts of their contributions not be publicized or otherwise released by the corporation except as required by law, since some might find such publication coercive. Potential con-

tributors should, however, be informed that the law does require that anyone who contributes more than \$200 to a PAC in a calendar year will be identified on publicly available reports filed by the PAC with the FEC. In practice, most PACs identify all persons who contribute to them, in periodic reports filed with the FEC. Persons who choose not to contribute must not be criticized in any way for that decision. Minimum contribution limits should not be established, although, as discussed above, contribution guidelines may be suggested. It is also permissible to give tokens of appreciation (for example, paperweights, pen and pencil sets, and the like) to persons who contribute to the PAC, or who contribute at least a certain amount; and

- A payroll deduction system for contributions to the PAC may be used for members of the restricted class. Under this system, the employee could voluntarily authorize the periodic deduction of PAC contributions from his or her paycheck. Authorization forms should enable the participant to increase, decrease, or terminate the deduction at any time. A "reverse" check-off system—whereby an employee's contribution is deducted automatically unless the employee directs otherwise, may not be used for contribution to a PAC.

**SOLICITING CONTRIBUTIONS FROM A CORPORATION'S "EXPANDED CLASS"** • Employees other than executive and administrative personnel are members of the "expanded class." The class includes former or retired employees who are not stockholders, and their families. The expanded class may be solicited by the connected organization or its PAC for contributions to the PAC only twice a year and the solicitation must be in writing. This contrasts to solicitations of the restricted class in two important ways: There is no restriction on the number of times that solicitations of the restricted class may be made, and solicitations to that class may also be made orally. Because of the many restrictions applicable to solicitations of the expanded class, many corporations have chosen not to solicit their expanded class of employees for contributions to their PACs.

#### **Methods of Soliciting the "Expanded Class"**

A solicitation to a corporation's expanded class of employees is far more complicated than a solicitation to its restricted class. In addition to the limitations discussed above, a solicitation of the expanded class is subject to the following requirements:

- Solicitations should be mailed to employees' residences (home addresses);
- A "custodian" should be named to receive contributions from those employees who wish to return their contributions to the custodian, and not directly to the PAC;
- Contributions may not be made through payroll deduction plans;
- The written solicitation materials must inform the employee of three things. First, the existence of a custodial arrangement for receiving contributions (discussed below). Second, that the corporation and the PAC cannot be informed of the names of persons who do not make contributions. Third, that persons who in a calendar year make a single contribution of \$50 or less or multiple contributions aggregating \$200 or less may maintain their anonymity by sending the contribution to the custodian; and
- The written solicitation materials should not be sent on corporate letterhead.

At the end of each year, the PAC may wish to send statements to those who contributed during that year, listing each contribution and the total amount contributed. It is also permissible to give tokens of appreciation to persons from the expanded class who contributed to the PAC or who contributed at least a certain amount. If a

corporation's hourly employees are represented by a collective bargaining agent, any method used by the corporation in its twice-yearly solicitation of the expanded class must be made available to the union at cost. Indeed, so long as the corporation's PAC, or a PAC for any of its subsidiaries, engages in twice-yearly solicitations of its expanded class, a union PAC may do the same, even soliciting employees who are not union members.

#### **Appointment of a Custodian To Receive Contributions from Expanded Class Members**

A corporation is required to appoint a custodian if it plans to solicit contributions to its PAC from its expanded class of employees. Use of a custodian permits such employees to contribute to the company's PAC without any direct communication with the PAC.

#### ***Who May Serve as Custodian?***

The custodian may not be a stockholder, officer, or employee of the company or of the PAC, except that the treasurer of the PAC may serve as custodian, provided he or she:

- Preserves the anonymity of contributors as required;

- Does not participate in the decisionmaking process whereby the PAC makes contributions and expenditures; and
- Continues to fulfill his or her regular duties as treasurer.

### ***The Custodian's Responsibilities***

The custodian's responsibilities are to receive contributions, keep records, and file reports to the corporation's PAC. The custodian is responsible for receiving contributions from those employees who wish to use him or her, depositing them in a separate bank account within 10 days of receipt, and periodically transmitting the funds to the PAC by checks drawn on the custodial account. Also, the custodian must report to the PAC the name, address, occupation, and employer of all individuals who make single contributions of more than \$50 or multiple contributions which total more than \$200 in the aggregate in a calendar year. Apart from this, the custodian may only report to the PAC the total number of contributions received and may not reveal information regarding small contributors or non-contributors. The custodian must keep accurate records of contributors and year-to-date totals for each contributor to know when the \$200 aggregate contribution for any contributor has been reached.

### ***Must Employees Send Contributions Through the Custodian?***

Employees do not have to send their contributions to the custodian. They may do so, however, if they desire the confidentiality provided by the custodial arrangement. If a pre-addressed return envelope is included with the written, twice-yearly solicitation materials, it should display the address of the custodian and not the address of the PAC itself.

The custodial arrangement described above is intended to assure anonymity to those contributors who desire it. Members of the expanded class should, however, be informed that anyone who makes a single contribution of more than \$50 or multiple contributions exceeding \$200 in the aggregate in a calendar year must be identified by the custodian in his or her reports to the PAC. Contributors of more than \$200 per year to the PAC must also be identified in publicly available reports filed by the PAC with the FEC. Contributors should be informed that the custodian may not release to the PAC the names of those who contribute less than the \$50 per contribution or \$200 in a calendar year.

**CONCLUSION** • Corporations may not use their treasury funds to make contributions or expenditures in connection with federal elec-

tions. They may, however, establish PACs, which may make such contributions or expenditures. Every PAC must have a treasurer to accept contributions and make expenditures.

Corporations and their affiliated PACs should take steps to insure that solicitations for contributions are made only to an appropriate audience and in a proper manner.

**PRACTICE CHECKLIST FOR  
The Organization and Operation of a  
Corporate Political Action Committee**

If you have a corporate client that wants to participate in the federal election process, it can do so through a corporate PAC. But even if the client establishes the PAC, it is likely to have some questions.

- Here are some of the most common questions (and answers):
  - May a connected organization (sponsoring corporation) contribute to its own PAC? Yes. A corporation may use its general treasury funds to establish, administer, and solicit contributions to its PAC, which in turn makes contributions to federal election campaigns;
  - What is a solicitation? The Federal Election Commission has determined that a solicitation is “any action that could fairly be considered a request for a contribution.” Such actions include the direct requests for monetary contributions to the PAC, announcements in newsletters or other publications that encourage support of PAC activities or provide information on how to contribute to the PAC and operation by a PAC of a fundraising booth at a trade association convention;
  - Who may be solicited? A corporation’s shareholders, employees and their families may be solicited for contributions to the PAC. A corporation may not solicit the general public or foreign nationals for contributions to its PAC;
  - Must contributions be voluntary? Yes. Contributions may not be secured by the use or threat of physical force, job discrimination, or financial re-

prisal. Fees, dues, or other monies required of employees by their employer as a condition of their employment, or money obtained by the PAC in any commercial transaction, may not be used by the PAC in connection with its activities;

- What is the extent of disclosure required as part of a solicitation? Whenever a solicitation is made, whether orally or in writing, the person being solicited must be informed of the political purposes of the PAC and his or her right to refuse to contribute without any reprisal as a result of such refusal;
- How are the required disclosures to be made? Both written and oral solicitations must contain the disclosures set out above. If the solicitation is written, the disclosures must be included in writing. Disclaimers must be "clear and conspicuous," meaning that they must not be difficult to read or be easily overlooked;
- Can guidelines be used for contribution amounts? Yes, but if they are, the persons being solicited must also be informed that the guidelines are merely suggestions, that they may contribute more or less than the guidelines suggest, and that the corporation will not favor or disfavor anyone by reason of the amount of their contribution or their decision not to contribute; and
- What are individual contribution limits and restrictions on a PAC solicitation? An individual may contribute no more than \$25,000 per calendar year to federally qualified political committees, including up to \$1,000 per federal election to a candidate or his or her authorized political committee, \$20,000 per calendar year to the political committee established by a national political party, and \$5,000 per calendar year to any other political committee, such as a corporation's PAC. A spouse of a corporate employee, even if he or she has no income other than that earned by the employee, may contribute in his or her own name in the same manner and up to the same limitations as the employee-spouse. Children of a corporate employee, including those under 18 years of age, may also contribute up to \$1,000 per candidate per election, subject to certain conditions. A PAC may not accept cash contributions in excess of \$100 from any contributor, or anonymous contributions in excess of \$50.