



Happy New Year: Tips for Federal PAC & Lobbying Compliance in the 2020 Election Year

01.14.2020 | By **William A. Powers, Frederick T. Dombo III, Amber R. Maltbie**

Although it may feel like the 2020 presidential election year has already been here for months (or years), the calendar finally reads 2020. Before you get too busy with 2020, we wanted to share a few useful tips for your PAC and corporate political activities. It's not exhaustive, but it's our hope that you can use this list to give your political operations a quick tune-up before 2020 kicks into high gear.

Now is the time to elect Monthly Filing status with the FEC. By default, the FEC puts PACs on the Quarterly Filing schedule, and during an off-year like 2019, that can be beneficial because only two reports (a Mid-Year and a Year-End) are required. One might think that staying on the Quarterly reporting schedule during an election year would be easier than the Monthly reports because there are eight less reports due over the year. This would be the case if your PAC made no contributions related to primary elections for House, Senate, or President, but for every primary you are involved in, your PAC could trigger a Pre-Primary and Post-Primary report, on top of the Quarterly Reports. As you may already know, if you file Monthly Reports, your PAC is not required to file pre- or post-primary reports. Choosing a Monthly filing schedule now, therefore, relieves you of the headache of tracking and monitoring whether your PAC makes primary-related contributions, and ultimately, Monthly Filing could mean the same or even less FEC reports than the Quarterly Option (not to mention avoiding RFAs related to those primary contributions).

No matter which filing frequency you choose, make note of the 2020 filing deadlines in our filing schedule and plan accordingly.

Now is also a good time to review your restricted class membership. January is a good time to evaluate whether you are reaching all of the eligible members of your restricted class. Not only do your members' contribution limits reset with the calendar, January is also a time when many promotions or raises take affect

that might result in employees becoming newly eligible to be PAC members.

This year, however, there's another reason to evaluate your restricted class. Starting January 1, 2020, the threshold for employees to qualify as an exempt executive, administrative, or professional employee under the Fair Labor Standards Act (FLSA) increased to \$684 per week from \$455 per week (that's an increase from \$23,660 per year to \$35,568 per year). This was the first change since 2004! Although being an exempt employee meeting this salary threshold is only half of meeting the eligibility requirements of the FEC restricted class test (the other is whether the employees' duties qualify), it's an important and easily quantifiable change that needs to be implemented for 2020 and beyond.

If you have any questions regarding your restricted class, don't hesitate to ask us.

It's not too early to start planning your DNC and RNC convention activities. We're early in the primary season, but for planning purposes, the DNC and RNC nominating conventions are right around the corner. The Milwaukee, WI Democratic National Committee convention takes place from July 13-16, 2020 and the Republican National Committee convention is the next month from August 24-27, 2020 in Charlotte, NC. There are numerous ways that your PAC or your corporation can be involved with these activities, ranging from hosting receptions, to contributing to the Host Committees, to engaging with convention-goers from around the country. With special rules around the Conventions (including to-be advisories issued by House and Senate Ethics Committees) we can help you start your planning now so that you can ensure your events are structured to comply with ethics and campaign finance laws.

Make sure you're using 2020 contribution limits. The FEC updated its contribution limits for 2019-2020 last year, but make sure you double check you are using the correct numbers when calculating your contributions, particularly if you contribute to some of the specialty national party accounts during a presidential election year.

Now is the time to determine the method by which you report your federal lobbying expenditures. The federal Lobbying Disclosure Act (LDA) provides most filers a choice of two different methods by which they may disclose their lobbying expenditures - the LDA method and the Internal Revenue Code (IRC) method. Once you choose a method for your first Lobbying Report (LD-2) of the year, you need to stick with it for the subsequent filings covering that calendar year. The LDA method requires filers to include the value of all communications with covered officials regarding *any policy or program of the federal government*, as well as regulations and legislation. The number of executive branch officials who are "covered" for purposes of calculating the expenditures is large compared to the IRC method. The IRC method essentially limits an organization's reportable executive branch lobbying to communications about legislation (regardless of to whom they are made); but it does include reporting of any public "grassroots" communications regarding legislation, as well as state level communications regarding legislation. Depending upon the type of advocacy program(s) you are running, you may want to consider a change in the method by which you disclose your expenditures.

It's not too early to begin collecting information regarding potential "Lobbying Contributions." In addition to reporting funds contributed to federal candidates, officeholders, leadership PACs, and political party committees the LDA requires registrants to include on their semi-annual "Lobbying Contribution Report" (LD-203) expenditures for "Honorary" (non-FECA) expenditures. Registrants are required to include the date, the name of honoree and/or honorees, the payee(s) and amount of funds paid:

- For an event to honor or recognize a covered Legislative Branch or covered Executive Branch official;
- To an entity or person that is named for a covered Legislative Branch official, or to an entity or person in recognition of such official;
- To an entity established, financed, maintained, or controlled by a covered Legislative or Executive Branch official or to an entity designated by such official;
- For a meeting, retreat, conference, or other similar event held by, or in the name of, one or more covered Legislative Branch or covered Executive Branch officials;
- To each Presidential library foundation and each Presidential inaugural committee.

It can take time to collect all of this information regarding an expenditure and to evaluate whether it's reportable; so it is advisable to start as soon as the semi-annual period is complete.

Also, while the chart below lays out your LDA filing obligations that cover 2020, the filing covering the fourth quarter (Q4) 2019 is due January 21st this time, instead of the 20th. This is because of the Martin Luther King, Jr. holiday. When a filing falls on a weekend or holiday, the LDA provides for next business day filing.