

FEC Matter Under Review 6121 - Trade Association PACs and Fundraising: A Case Study

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The Federal Election Commission (FEC) recently released a conciliation agreement (MUR 6121) entered into by the Advanced Medical Technology Association (AdvaMed), its PAC and the PAC's treasurer, in his official capacity. AdvaMed self-reported to the FEC after its new treasurer ordered a legal and compliance audit after assuming his position as treasurer. This audit of the 2006 election cycle uncovered a number of mistakes made by the trade association in operating its PAC and engaging in fundraising. It provides a case study for other corporations and trade association PACs that can learn from some of the following mistakes:

- The PAC solicited contributions from individuals not within its restricted class.
- The PAC solicited contributions from the PACs of the association's member corporations.
- The PAC solicited contributions from employees of nonmember companies.
- The PAC failed to maintain prior authorization forms from member companies or simply did not obtain them in the first instance.
- The PAC failed to disclose contributions from several individuals, misreported other contributions by failing to identify the actual date of receipt, put the wrong amount on one receipt and misreported another.
- The PAC also failed to report two contributions to federal candidates, failed to file pre-primary reports and failed to

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disclose or misreported fundraising expenses as well as bank fees.

- The PAC's cash-on-hand amounts were misstated.
- The PAC reported primary election contributions as general election contributions without properly designating them.
- Contributions over \$50 were not properly forwarded to the PAC by its collecting agent within 10 days as required by law.
- Deposits were not timely made within 10 days of receipt, and two contributions were never deposited.
- The trade association advanced costs for fundraising events hosted by the PAC that were either not reimbursed at all-in contravention of the law-or reimbursed after the fact and not in advance as required by law.
- The PAC did not follow the one-third rule when holding a PAC raffle and failed to reimburse the trade association as required, resulting in a corporate in-kind contribution.

The FEC showed leniency to AdvaMed because it *sua sponte* disclosed these violations, and because (1) the trade association hired counsel to assist in compliance and an independent auditor to confirm its findings and (2) the trade association restructured its PAC to comport with the FEC's recommended best practices (www.fec.gov/law/policy/guidance/internal_controls_polcmtes_07.pdf). The FEC imposed a relatively modest civil penalty of \$19,000 and required the PAC to amend its reports and disgorge funds raised outside of the restricted class or prove that the contributions from the member company PACs were unsolicited.

What are the lessons to be learned? Do you recognize any of these mistakes as mistakes made by your PAC? Wiley Rein has often recommended that you conduct audits of your own to make sure your PAC is following best practices. In the January issue of *Election Law News*, we provided an end-of-cycle checklist for consideration (www.wileyrein.com/federal_pac). Unfortunately, it is often only after a case like this becomes public that this self-assessment takes place. If you haven't had your PAC audited lately, now is the time.