

FEC Issues Zero Tolerance Decision on Foreign National Contributions

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In a little noticed decision earlier this month, the FEC announced the settlement of an enforcement case that sets a compliance standard that few companies may currently meet. FEC [ADR Case 708](#) (Marsh & McLennan Companies, Inc. PAC). The outcome is even more surprising because the case involved a single errant donor the company brought to the FEC's attention *via* a [sua sponte submission](#). In a global economy where American corporations are increasingly building an executive class made up of talented individuals from around the world, the standard set in this decision will present a complicated and expensive compliance problem for many companies.

In January, an employee in insurance company Marsh & McLennan's New York office raised a concern that his L-1A visa (for intracompany transferees of executive or management level employees) might not be the same as being a lawful permanent resident alien under the FEC's rules. He had given the company PAC the maximum permissible contribution in 2010 – 2014. Marsh had limited its solicitations to U.S. residents working in its U.S. facilities. The company also confirmed the immigration status of donors when questions arose. In 2012, the company adopted a policy of having all PAC donors certify that they were a U.S. Citizen or lawful permanent resident alien. The donor in question signed that certification in 2012. In 2013, he failed to check the box on the certification, but his contribution was processed anyway. In total, he gave the PAC \$20,000 over those four years.

Within thirty days of learning of the donor's concern, the company refunded all of his contributions. It then reviewed the immigration status of everyone who contributed to the PAC during the prior six years. This confirmed that there was only a single instance of an ineligible donor. The company reviewed its compliance program and tightened controls, including (but not limited to):

- Screening potential PAC donors;
- Confirming the immigration status of all donors prior to accepting a contribution;
- Having at least two people review all PAC contribution forms to confirm self-certification;
- Revamping the contribution form to emphasize the self-certification of eligibility; and

- Conducting a compliance audit of the PAC's activities each election cycle.

The company then [self-reported](#) the violation to the FEC and the steps it had taken to correct its practices.

Despite the inadvertent nature of accepting impermissible contributions; the absence of any outward indication the donor was ineligible; the fact it involved only a single donor in six years; the remedial steps including the disgorgement of all improper funds; and the use of a *sua sponte* submission to bring the matter to the FEC's attention, the agency found this was not enough. In a [negotiated settlement](#), the FEC also insisted:

- The PAC admit it violated the law;
- Pay a \$3,000 civil penalty;
- Designate a compliance specialist;
- Circulate a policy on eligibility and limitations on contributions to the PAC; and
- Attend an FEC conference.

In the past, the FEC has aggressively enforced the ban on foreign national contributions when there was evidence of an intent to violate the law, or where the respondent disregarded facts that would lead a reasonable person to question the validity of a contribution. See, e.g., MURs 4530/4531/4547/4642/4909 (International Buddhist Progress Society, Inc., DNC Services Corporation/ Democratic National Committee, John Huang, et. al.) (multiple violations including foreign national contributions led to \$719,500 in civil penalties); MUR 4398/PM 307 (Thomas Kramer et. al.) (foreign national contributions and contributions in the name of another led to \$426,000 in civil penalties); and MUR 6129 (American Resort Development Association Resort Owners Coalition PAC) (multiple violations including foreign national contributions from off-shore addresses led to \$300,000 in civil penalties).

But here, in an area where the FEC offers no regulatory guidance, no requirement of a disclaimer or self-certification, and there was no evidence that would prompt inquiry as to the donor's eligibility, the assessment of a civil penalty in a matter the FEC was unlikely to detect absent a self-reporting of the violation may signal a shift in how the agency addresses these cases. The adoption of a "zero tolerance" policy on contributions by foreign nationals will be one that many PACs (and other types of political committees) may have difficulty meeting.

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