

U.S. House Considering Major Change to Trade Association PAC Fundraising Rules

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The U.S. House Committee on Appropriations is considering a major change to the way trade associations are allowed to raise money into their political action committees (PACs). Currently, if a trade association wants to solicit money from its member companies' employees, it must first get advance approval from the company, and each company can authorize only one trade association to solicit its employees for any calendar year. The current draft of the [Financial Services and General Government Appropriations](#) bill, which provides funding for the Federal Election Commission (FEC), includes a rider that would prohibit the FEC from using any of the appropriated funds to enforce these trade association PAC fundraising rules. In another piece of welcome news for trade associations, the bill would also prohibit the Securities and Exchange Commission (SEC) from requiring public disclosure of companies' trade association dues payments, a provision which was also successfully included in last year's appropriations bill by agreement with the White House.

The practical effect of this provision would be that the FEC could not enforce the existing restrictions on trade association PAC fundraising at all during fiscal year 2018 (October 1, 2017 through September 30, 2018). If this provision were not enforced, this could have a major impact on trade association PAC fundraising. The dual restrictions of 30118(b)(4)(D) can severely limit a trade association's ability to raise money for its PAC. Currently, if a trade association wants to solicit a member company's employees, it must first convince the company to allow the solicitation, but the FEC's rules severely limit what the trade association can say when making the request. Most companies are members of more than one trade association, but can currently only approve one of those associations' PAC solicitations. Thus, companies must choose between supporting the PAC of a large business-wide trade association (like the Chamber of Commerce or National Association of Manufacturers), or a more industry-specific trade association. With these burdens lifted, trade associations will be able to solicit funds freely from the executives, administrative staff, and stockholders of all of their member companies, plus those individuals' families. This should come as welcome news to trade associations, but will be less exciting to member company executives who could face an onslaught of new solicitations.

However, this all comes with two major caveats. *First*, the bill does *not* eliminate the solicitation rule. Instead, it essentially prohibits enforcement of the rule for FY2018. If the FY2019 appropriations bill

does not contain the same restriction as this FY2018 bill, then the FEC presumably could resume enforcement of violations, including violations that occurred in FY2018. *Second*, even if the FEC is barred from enforcing this prohibition, the Department of Justice might theoretically be able to, acting independently, bring criminal charges for knowing and willful violations.

Therefore, even if this provision remains in the final bill, it would be prudent to seek advice of counsel before making a solicitation that violates the fundraising restrictions. The bill passed through subcommittee markup on Thursday with no changes.

The [same bill](#) also includes other political and election law provisions, including elimination of the Election Assistance Commission, which provides guidance on election best practices; restrictions on the IRS' ability to enforce the rule against religious organization political activity; a prohibition on any IRS rulemaking that would regulate the political activity of 501(c)(4) social welfare organizations; and a prohibition on any SEC requirement that companies disclose their political contributions or trade association dues.

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