

# FEC Approves Two-to-One Charitable Matching Program

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By Caleb P. Burns and Stephen J. Kenny

The Federal Election Commission's (FEC) recent dismissal of a complaint filed against Wal-Mart Stores broke new ground in the area of corporate charitable matching of political action committee (PAC) contributions. At issue in MUR 6873 was whether Wal-Mart is allowed to solicit PAC contributions from eligible employees by offering to double an employee's contribution amount in charitable donations. For the first time, the FEC approved a charitable matching program that goes beyond one-to-one matching. Additionally, the Commission approved the program's exclusive arrangement with a charity that provides assistance to Wal-Mart employees who face unexpected financial difficulties.

In 2004, Wal-Mart adopted a charitable matching program for PAC contributions. Under this program, Wal-Mart doubles the amount of any contribution to the corporation's PAC in charitable donations. The exclusive recipient of charitable contributions is Associates in Critical Need Trust (ACNT), a charity established by Wal-Mart to provide financial assistance to Wal-Mart employees who experience severe financial hardship. The complaint alleged that this arrangement was an improper exchange of corporate treasury funds for voluntary contributions to Wal-Mart's PAC and the 2-1 matching ratio was a form of indirect compensation for PAC contributions. The complainants also asserted that, because participants in the PAC charitable matching program are eligible to receive grants from ACNT, Wal-Mart was providing a financial benefit to employees in return for PAC contributions.

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By a vote of 4-2, the Commission dismissed the complaint. Previously, the Commission was divided on the permissibility of two-to-one matches of PAC contributions. But the Commission concluded that reducing a donor's burden with respect to making a charitable donation is not indirect compensation to the individual and is a permissible solicitation expense. The Commission also concluded that, because receiving a grant from ACNT is entirely unrelated to making a contribution to the PAC, an employee obtains no direct financial benefit from contributing to the PAC. In any event, the number of PAC contributors who ultimately received an ACNT grant was *de minimis*.

Charitable matching is a valuable part of any company's strategy to solicit PAC contributions from eligible employees. Wiley Rein has deep experience in this area and is able to help companies establish a PAC solicitation program in accordance with federal law.